

REMARKS

Reconsideration of this application is requested.

It is noted that the Examiner kindly amended the restriction requirement so as to include claim 7 in examined Group I. New claim 14 has been presented to claim a specific combination from claim 1. Thus claims 1, 2, 7, 11 and 14 are currently under examination.

The Examiner rejected all claims under 35 USC 103(a) as unpatentable over Wachendorff-Neumann et al ('567). This rejection is traversed, as the '567 patent specifically requires a methoximinoacetamide derivative of the general formula I to be present in disclosed fungicidal combination. While '567 discloses other compounds in combination with the methoximinoacetamide derivatives, such as, for instance, trifloxystrobin and picoxystrobin, it is clear that the methoximinoacetamide derivatives are essential to the combinations of the '567 patent. All claims in this application have been limited to the active ingredient "consisting essential of" prothioconazole and one of three specified fungicidal compounds, with the prothioconazole and the further fungicidal compound being present in synergistically effective amount. Since the claims exclude the presence of other essential ingredients, the methoximinoacetamide derivatives of the '567 patent are excluded, and therefore the '567 patent does not

render obvious the present claims, as one of ordinary skill in the art, when considering the '567 patent, would never delete from a fungicidal mixture the basic active compound of that patent, namely the methoximinoacetamide derivative.

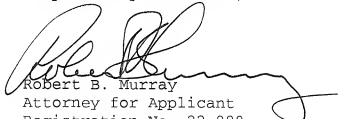
In addition, the '567 patent fails to disclose the specific combination of prothioconazole and one of the other claimed three fungicidal compounds, and also fails to disclose the claimed synergistic fungicidal mixture wherein the prothioconazole and the further fungicidal compound are present in a synergistically effective amount. For all of these reasons, the rejections based on the '567 patent should be withdrawn, and such action is requested. The Examiner's attention is specifically directed to the fact that the cited art does not disclose the composition of new claim 14, especially in a synergistically effective amount.

In the absence of more relevant prior art, it is believed that claims 1, 2, 7, 11 and 14 are clearly distinguished over the prior art and are in proper condition for allowance. An early notice to that effect is solicited.

If any additional payment is required, please charge the
cost thereof to deposit account no. 02-2135.

Respectfully submitted,

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